

e. **Remarks**

CLAIM OBJECTION

At pages 2-3, the Office Action objects to the recitation of “the lists” in claim 1 as lacking antecedent basis.

To simplify prosecution of the pending claims, the Applicants have amended claim 1 to delete “a plurality of” at line 3 and to recite “lists of channel rankings” at lines 4 and 9. This should eliminate any remaining objections based on antecedent basis. The Applicants do not however, concede that the requirement of antecedent basis demands such an amendment.

OBVIOUSNESS REJECTIONS

At pages 2 and 18, the Office Action refuses to consider a Declaration under 37 CFR § 1.132 by S. Borst. The Declaration was submitted to support the non-obviousness of pending claims.

With respect to the Declaration(s) under 37 CFR § 1.132 of S. Borst, the Office Action further states:

“A declaration and statement of evidence from each person listed as a co-author of the applied reference is required. The declaration solely from co-author Borst is **not sufficient**.”

Office Action, page 2, lines 11 – 12; page 18, lines 9 – 10.

Borst is only one of the co-authors in the article published at Bell Labs Technical Journal Vol. 2, No. 3, (1997) pages 81 – 98. Nevertheless, Applicants know of no basis for refusing to consider a Declaration under 37 C.F.R. § 1.132, because the individual making the declaration is only one of the co-authors of an applied reference. (It is noted that this is a Declaration under Sec. 1.132 rather than under Sec. 1.131.) Applicants respectfully request that the Examiner either consider the submitted Declaration(s) under 37 C.F.R. § 1.132 or cite a legal basis for refusing to do same. That is, Applicants respectfully request a citation of a law, a rule, or a precedential case if the refusal to consider such a Declaration is maintained.

Also, at pages 2 and 18, the Office Action does not appear to specifically respond to the arguments with respect to non-obviousness as submitted in the last response.

Specific responses to the arguments of non-obviousness are needed so that the Applicants can understand any remaining rejections and so that the Applicants can determine how to proceed. For that reason, the Applicants respectfully request either specific responses to the arguments on non-obviousness in the previous and present responses or allowance of the pending claims.

CONCLUSION

In light of the submitted arguments and Declarations under § 1.132, Applicants request allowance of claims 1 – 14, 24, and 26 – 28 as currently presented.

In the event of any non-payment or improper payment of a required fee, the Commissioner is authorized to charge or to credit **Lucent Technologies Deposit Account No. 12-2325** to correct the error.

Respectfully,



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